

# INDUSTRIAL INSURANCE

## *Exempt Independent Contractor*

RCW 51.08.180 states that an independent contractor who provides essentially personal labor is covered by industrial insurance. If the individual has their own employees, or provides equipment (beyond ordinary hand tools) in performing the work, they are considered to be providing more than personal labor and are exempt from coverage. IF exempt under RCW 51.08.180, there is no need to apply the six-part test.

If an individual does not supply equipment or the labor of others, then the alternative test (six-part test shown below and described in RCW 51.08.195) is applied. The individual must meet ALL six parts of the tests to be exempt.

Contact the local Labor & Industries office for more information

### **RCW 51.08.195 – The Six-Part Test**

1. **Free from direction and control, both by contract and in fact.** Contracted individual has the responsibility to deliver a finished product or service without the contracting firm having any; supervision over the work hours or methods and details of performance except the deliverance of an agreed upon product by a certain date.
2. **Service is outside usual course of business of employer.** Services performed are different in nature than the services usually performed by the employer.

- OR -

**Service is performed outside all places of business of the employer.** Place of business usually means physical location of employer's business but can also mean a job site when referring to a sub-contractor

- OR -

**The individual is responsible**, both under the contract and in fact, for **the costs of the principal place of business** from which the service is performed.

The individual pays the business expensed, e.g., rental, purchase, or leasing of a location in which, or from which, services are performed.

(Meeting any one of the above three circumstances will indicate compliance with Test #2).

3. The individual is customarily engaged in an independently established trade or business. Evidence of the independently established business may include:
  - The business was functioning prior to the contract and will continue to operate following the completion of said contract
  - The possibility that the individual may suffer a loss in the business.
  - Possession of a valid business license
  - Advertisement to the public
  - Other customers or clients
  - An established office or place of business

- OR -

The individual has a principal place of business eligible for an IRS business deduction.

(Meeting either of the above two circumstances will indicate compliance with Test #3).

4. On the effective date of the contract, **the individual is responsible for filing a schedule of expenses with the IRS** on the next applicable filing date for the type of business under contract.
5. On the effective date of the contract, or within a reasonable period after, **the individual has established an account with the Department of Revenue and any other state agency that collects taxes for the business operated.**

“Within a reasonable period” means prior to the performance of any service under the contract, or dates required by law.
6. On the effective date of the contract, **the individual is maintaining a separate set of books and records reflecting items of income and expense for his/her business.**

This card is intended as a Quick Reference Guide. We make every effort to ensure that it is correct. When using this card, please understand it is not intended to replace Department of Labor and Industries or insured's policies, procedures, RCW's or WAC's in their entirety. If you have any questions, please contact your local Labor & Industries service location.